

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-204

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Provincetown, Massachusetts)

RM-8266

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 29, 1993; Released: November 12, 1993

By the Assistant Chief, Allocations Branch:

1. Pursuant to the request of Lower Cape Communications, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4924 (1993), proposing the substitution of Channel 221A for Channel *220A at Provincetown, Massachusetts, and reservation of the channel for noncommercial educational use. Petitioner also requested modification of its license for Station WOMR, Channel *220A, to specify operation on Channel 221A. Supporting comments were filed by the petitioner reiterating its intention to apply for the channel.¹ The University of Massachusetts ("University") filed comments.

2. University states that it is the applicant for a new noncommercial educational FM station on Channel 220A at Falmouth, Massachusetts, that is mutually exclusive with petitioner's proposal for Provincetown. University further states that it has filed an amendment to its application (BPED-930114MC) for Channel 220A to request processing under Section 73.215 of the Rules with respect to Station WOMR. According to University, the processing of its application for Falmouth need not depend on the outcome of the rulemaking proceeding as the conflict has been resolved.

3. As stated in the *Notice*, noncommercial educational stations generally operate within the reserved portion of the FM band (201-220). Exceptions have been made in cases where channels in the noncommercial educational band are not available because of foreign allocations (Canadian or Mexican) or potential interference to operation on VHF Television Channel 6. As Provincetown is located on the outer edge of the 47 dBu service contour of Television Station WLNE, Channel 6, New Bedford, Massachusetts, Station WOMR is precluded by the provisions of Section 73.525 of the rules from operating on Channel 220 with full Class A facilities. Further, because Station WOMR is

FCC required to protect co-channel Television Station WUMB, Boston, Massachusetts, it is limited to a non-directional power of approximately 1.0 kilowatt from an antenna 100 meters above average terrain. Potential interference to Stations WLNE and WUMB, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use.

4. In response to the *Notice*, petitioner states that allotment of Channel 221A at Provincetown will have no preclusionary impact on non-commercial channels 218, 219 and 220. According to petitioner, allotment of Channel 221A in Provincetown will permit the use of Channel 220A in Falmouth as currently requested by the University of Massachusetts and will clear the way for the use of Channel 219 in the Lower Cape communities of Orleans, Chatham, Eastham and Brewster. Currently, use of Channel 218 is precluded by Channel 220A at Provincetown and by Channel 218A in Sandwich, Massachusetts. Depending on the amount of power requested by a Channel 218 applicant, the substitution of Channel 221A for Channel 220A at Provincetown will have only a minor effect on the area where Channel 218 can be used. Petitioner notes that use of Channel 218 on the Lower Cape would preclude use of Channel 219 in the same area. Petitioner asserts that allotment of Channel 221A in place of Channel 220A at Provincetown will make it easier to establish new non-commercial stations on Cape Code.

5. After a review of the comments, we conclude that the reservation of a commercial channel is justified. No party has expressed an interest in the use of the channel as a commercial facility. Channel 221A can be allotted to Provincetown, Massachusetts, in compliance with the Commission's minimum distance separation requirements at petitioner's proposed site.² Although Channel *221A at Provincetown is short spaced to the site proposed by the University of Massachusetts in its application for Channel *220A at Falmouth, Massachusetts, University filed an amendment requesting that its application be processed pursuant to Section 73.215 of the Rules which provides contour protection for short spaced allotments. A Commission engineering analysis confirms that assuming maximum Class A facilities for Station WOMR, Channel *221A, Provincetown, and actual facilities for the application for Channel *220A, Falmouth, the possibility of interference has been removed.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 27, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Provincetown, Massachusetts	*221A

7. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the License of Station

¹ In response to the *Notice*, petitioner also provided an affidavit verifying the statements in the petition.

² The coordinates for Channel *221A at Provincetown are 42-03-54 and 70-09-34.

WOMR, Provincetown, Massachusetts, IS MODIFIED, to specify operation on Channel *221A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLED-820405AA except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLED-820405AA, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
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